Wednesday, June 21, 2000

**UNITED STATES BANKRUPTCY COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

In re

ROY and JULIE CRUMRINE, No. 98-13599

Debtor(s).

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**Memorandum of Decision**

INTRODUCTION

Creditors Patricia and Michael Blum have filed a motion to set aside confirmation of the debtors' Chapter 13 plan. The gist of the motion is that they did not get adequate notice of the court's order confirming the plan. Although FRBP 7001(5) requires that such a request be done by adversary proceeding, it is apparent that such an adversary proceeding is time-barred. The court accordingly decides the issue on the merits, and will deny it with prejudice.

CHRONOLOGY

The debtors commenced this case by filing a Chapter 11 petition on September 24, 1998. At that time, they were involved in litigation with the Blums.[1] On October 8, 1998, the Blums' attorney, Rosendo Gonzales, filed a request pursuant to FRBP 2002(g) that notices to the Blums be sent to him. On January 27, 1999, the debtors filed a motion to convert this case to Chapter 13. Gonzales was properly noticed with this motion, as well as an amended motion filed on February 2, 1999. On March 2, 1999, the debtors' motion to convert the case to Chapter 13 was granted. On March 18, 1999, Gonzales signed and filed a pleading in district court which stated that "[t]he [Crumrine]case was later converted to Chapter 13 in February, 1999." In this district, the Chapter 13 trustee is the person designated by the court to give notices pursuant to FRBP 2002(b). On March 16, 1999, the Chapter 13 trustee gave notice to creditors of the hearing on confirmation of the debtors' plan. The trustee evidently missed Gonzales' request for notice; he served only the Blums. On May 17, 1999, the plan was confirmed. On May 27, 1999, Gonzales filed several pleadings with the court. They properly stated "[Chapter 13]" in the caption, replacing "[Chapter 11]" on Gonzales' earlier pleadings. On June 22, 1999, an order confirming the Chapter 13 plan was entered.

On August 12, 1999, Gonzales deposed debtor Julie Crumrine. Pursuant to his request for documents, she produced a file-stamped copy of the Chapter 13 plan at that time. On September 15, 1999, Gonzales was present at another deposition of her conducted by the trustee's counsel. The following is an excerpt from the transcript: Q. Do you know the status of the 13? A. Yes Q. Okay. What is the status? A. The plan has been confirmed.

ISSUE

The sole issue in this case is whether it is too late to revoke confirmation of the Chapter 13 plan.

DISCUSSION

Section 1330(a) of the Bankruptcy Code provides: (a) On request of a party in interest at any time within 180 days after the date of the entry of an order of confirmation under section 1325 of this title, and after notice and a hearing, the court may revoke such order if such order was procured by fraud. Notwithstanding the express wording of the statute, the Blums argue that the court can revoke confirmation outside the 180-day limit. The court finds no validity to this position. The essence of the Blum's argument is that their due process rights were violated because only they, and not their attorney, were given notice of the confirmation hearing.[2] However, due process does not require formal notice, as the Blums assert; informal notice is just as effective. In re Price, 871 F.2d 97, 99 (9th Cir. 1989)("[M]ere knowledge of a pending bankruptcy proceeding is sufficient to bar the claim of a creditor who took no action, whether or not that creditor received official notice from the court of various pertinent dates."). As a general rule, a creditor who learns of a bankruptcy when there is at least 30 days before a bar date is fairly held to the consequences of missing the date. In re Dewalt, 961 F.2d 848, 851 (9th Cir.1992). In this case, the clear facts are that the Blums themselves received all required notices. Their request that they be served via their attorney was not honored. However, that attorney clearly knew the status of the case and had clear knowledge of the confirmation when there

was still three months of statutory time remaining.[3] The Blums are accordingly properly barred from seeking to vacate confirmation after the bar date.

EQUITABLE CONSIDERATIONS

In this motion, the Blums principally rely on FRCP 60(b). However, that rule is not fully applicable in bankruptcy proceedings. FRBP 9024 does provide that FRCP 60 applies generally to bankruptcy matters, with several exceptions. The last sentence of that rule provides that "a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144, § 1230, or § 1330." It is therefore almost certain that the court has no equitable power to ignore the bar date under any circumstances. See In re Coastal Alaska Lines, Inc., 920 F.2d 1428, 1432 (9th Cir. 1990). However, even if the court had the power to vacate the confirmation order on equitable grounds it would not do so. *The Blums have not rebutted the presumption that they received notice of the hearing on confirmation of the plan.* See In re Bucknum, 951 F.2d 204, 206-7 (9th Cir. 1991). Their entire argument is that their counsel should have received the notice instead of them. This does not rise to anywhere near the level of denial of due process. Either the Blums or their counsel received every notice required by the Federal Rules of Bankruptcy Procedure.[4] Due process is satisfied by much less. See In re Coastal Alaska Lines, Inc., supra, at 1430-31. Even if the Blums had received no notice at all, the court would not grant the motion because the Blums did not act diligently. They have no valid excuse for the eight-month delay in filing their motion after Gonzales was *explicitly told* that a plan was confirmed.[5] They cannot allow the plan to proceed and the debtors to make payments for such a long period of time and then, finally, seek to pull the rug out from under everyone.

CONCLUSION

FRCP 60 does not apply to requests to vacate Chapter 13 plan confirmation orders. Even if it did, the Blums have not shown facts justifying relief under that rule or anything like the diligence necessary to invoke the equitable powers of the court. For these reasons, their motion will be denied. Counsel for the debtors shall submit an appropriate form of order.

Dated: June 21, 2000

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Alan Jaroslovsky

U.S. Bankruptcy Judge

1. The Blums are the parents of debtor Julie Crumrine

2. The also argue that he was not served with the conversion order or the order confirming the plan. However, there is no requirement in the Federal Rules of Bankruptcy Procedure that these orders be served on anyone.

3. In addition, nowhere does Gonzales allege that his clients did not forward their notice on to

him or that he did not know about the confirmation hearing. His argument is only that he did not receive *notice*, not that he had no *knowledge*.

4. See note 2, supra. Creditors are entitled to notice of the hearing on the motion to convert and notice of the confirmation hearing. FRBP 2002(a)(4), FRBP 2002(b). The Blums received both notices.

5. The court believes that Gonzales knew about the confirmation well before September 15, 1999. In the exercise of ordinary diligence, he certainly should have

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